



CALIFORNIA STATE BOARD OF EDUCATION

SEPTEMBER 2004 AGENDA

☒ General Waiver

SUBJECT

Request by **California Virtual Academy @ Kern Charter School** for a waiver of Title 5 of the *California Code of Regulations* (5 CCR) Section 11963.4(b)(3) to allow the charter school to receive full funding with less than 50 percent (but more than **40 percent**) of expenditures required for certificated staff costs due to the characteristics of a "Virtual Education Program."

Waiver Number: 9-9-2003

☒ **Action**

☐ **Consent**

RECOMMENDATION

☐ **Approval** ☐ **Approval with conditions** ☒ **Denial**

Reason: *Education Code* Section 33051(a)(6) "substantially increases state costs," and for the other reasons described in the following analysis.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Senate Bill (SB) 740 (Chapter 892, Statutes of 2001) allows funding reductions for charter schools that offer non-classroom-based instruction (*Education Code* Sections 47612.5 and 47634.2). Non-classroom-based instruction occurs when a charter school does not require attendance of its pupils at the school site under the direct supervision and control of a qualified teaching employee of the school for at least 80 percent of the required instructional time. For 2003-04 and each fiscal year thereafter, the law states that funding reductions of 30 percent of qualifying charter schools' non-classroom-based average daily attendance (ADA) shall be made unless the State Board of Education (SBE) determines that a greater or lesser percentage is appropriate for a particular charter school. Furthermore, pursuant to SB 740, a charter school is prohibited from receiving any funding for non-classroom-based instruction unless the SBE determines its eligibility for funding.

SB 740 also established the Advisory Commission on Charter Schools (ACCS) to develop the criteria for the SBE to use in making funding determinations. The ACCS also provides recommendations to the SBE on appropriate funding determinations for non-classroom-based charter schools and on other aspects of the SBE's duties under the Charter Schools Act.

The SBE adopted permanent regulations that were adopted in November 2003 that specified the criteria that a non-classroom-based charter school must meet in order for the SBE to determine that the school shall receive 100 percent funding. For 2003-04 and each fiscal year thereafter, the full funding criteria are that at least 50 percent of the school's public revenues must be spent on certificated employee salaries and benefits and at least 80 percent of all revenues must be spent on instruction and

instruction-related costs. Schools must spend a minimum of 40 percent on certificated employee salaries and benefits and 60 percent on instruction and instruction-related costs or the funding percentage is zero. Pursuant to the regulations, the SBE may approve a higher or lower funding level than the criteria would prescribe based upon mitigating circumstances of the school that indicate that a higher or lower funding level is appropriate.

Date stamped into CDE on September 2003, this waiver has been scheduled two other times to the SBE, most recently in March, 2004 when the Board made an official request that the Advisory Commission on Charter Schools (ACCS) give a recommendation on this waiver, and work on a waiver policy for waivers for virtual or computer based charters, and to provide a recommendation on the percentage funding level.

Although the policy has been discussed two times by the Commission, they have not yet made a formal recommendation to the SBE. The charter school requests that the waiver be heard at the September 2004 SBE meeting.

SUMMARY OF KEY ISSUES

California Virtual Academy @ Kern Charter School is seeking a waiver of the required 50 percent as follows:

Title 5 CCR Section 11963.4(b)(3) "If the percentage established pursuant to paragraph (1) of subdivision (c) of section 11963.3 equals or exceeds ~~50~~ percent, the percentage calculated pursuant to paragraph (2) of subdivision (c) equals or exceeds 80 percent....

They ask that the percentage be set by condition to be **40** percent (or greater) allow of expenditures required for certificated staff costs due to the characteristics of a "Virtual Education Program." The basis of California Virtual Academy's request is that on-line charter schools are currently being treated as independent study programs, and that the SB 740 requirements do not take into consideration the required funding distribution required toward instructional materials, computer equipment, and the on-line curriculum in their particular program. The school provides information showing approximate expenditures of 55 percent of the school's state funding to provide infrastructure requirements for the program before including teacher salaries, special education services, counseling, administrative services, and other costs.

CDE recommends denial of this waiver request for the following reasons:

1) *Education Code* Section 33051(a)(6): Approval of this waiver would potentially significantly increase state costs (or result in foregone savings). See the fiscal analysis for full discussion.

2) The funding determination process required by SB 740 was intended to include a variety of non-classroom-based schools, and not just independent study charter schools. *Education Code* Section 47612.5(d)(1) states, "non-classroom-based

instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.” It was always the intent of SB 740 to include virtual schools, i.e., distance and computer-based education, in the funding determination process. There are a variety of non-classroom-based charter schools that are required to go through the SB 740 funding determination process. The California Virtual Academy schools are not the only charter schools in the state offering on-line instructional programs. All of these schools are required to meet SB 740 requirements (or demonstrate through that process why they should be exempted).

3) The ACCS, through the SB 740 funding determination process, provides funding recommendations to the SBE on non-classroom-based charter schools. If one or more mitigating circumstances are factors for a school in not meeting the percentage criteria required for 100 percent funding, documentation can accompany the funding determination request form and the ACCS will fully consider this information in their funding recommendation to the SBE.

Representatives from the school always have an opportunity to appear before the ACCS and the SBE to present relevant information related to their school’s operations. When the percentage criteria for full funding are not met, it is the charter school’s responsibility to provide documentation to the ACCS and the SBE that demonstrates that the mitigating circumstance is compelling. Approval of this waiver would bypass a process already established for the SBE to consider this information. It would also be premature of the SBE to make this determination without the benefit of all the other information provided on the SB 740 forms.

Authority for Waiver: *Education Code (EC) Section 33050*

Period of request: 2004 – 2005 year

Local board approval date(s): 12/12/03

Public hearing held on date(s): 12/12/03

Bargaining unit(s) consulted on date(s): The school does not have any employee bargaining units.

Name of bargaining unit/representative(s) consulted: The school does not have any employee bargaining units.

Position of bargaining unit(s) (choose only one): The school does not have any employee bargaining units.

☐ Neutral ☐ Support ☐ Oppose

Comments (if appropriate):

Public hearing advertised by (choose one or more):

☒ posting in a newspaper ☐ posting at each school ☒ other (Notice Posted at District Offices, Notice Posted at meeting site)

Advisory committee(s) consulted: No parent committee. Governing Board (with parents) reviewed waiver.

Objections raised (choose one): ☒ None ☐ Objections are as follows:

Date(s) consulted: September 23, 2003

FISCAL ANALYSIS (AS APPROPRIATE)

The SB 740 regulations for 2003-04 require that at least 40 percent of public revenues be spent on certificated employee salaries and benefits to receive a funding level of 70 percent and at least 50 percent of public revenues spent on certificated employee salaries and benefits to receive full funding. California Virtual Academy is asking for full funding with less than 50 percent (but more than 40 percent) of expenditures required for certificated staff costs.

Therefore, approval of this waiver could result in foregone Proposition 98 savings to the state, assuming that the SBE would have approved this school at the 70 percent funding level through the SB 740 funding determination process. Based on the current enrollment of 434 students and K-6 charter school funding rates of approximately \$4,700 per pupil, these foregone savings could be at least \$611,940 per year. If the school is unable to meet the minimum 40 percent criterion for any funding, and the SBE makes a zero percent funding determination through the SB 740 process, then the foregone savings would be about \$2.0 million.

BACKGROUND INFORMATION

Action Item: Some documentation is available for web viewing. Waiver forms and other hard copy documents are available for viewing at the Waiver Office or State Board Office.